

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 Before The Honorable Jacqueline S. Corley, Magistrate Judge
4
5 UNITED STATES OF AMERICA,)
6 Plaintiff,)
7 vs.) No. 14-MJ-70731-MAG-1
8 LUKE D. BRUGNARA,)
9 Defendant.)
10 _____)
11 San Francisco, California
12 Wednesday, May 28, 2014
13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
14 RECORDING
15 APPEARANCES:
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17 United States Attorney's
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1 Wednesday, May 28, 2014

9:47 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling Case Number 3:14-MJ-70731, USA
5 versus Luke Brugnara.

6 MR. SPRAGUE: Good morning, your Honor. Doug
7 Sprague for the United States.

8 THE COURT: Good morning.
9
10 (Defendant confers with counsel.)

11 THE COURT: All right. So Mr. Brugnara, we're
12 here this morning because you have been charged in a
13 criminal complaint with mail fraud.

14 And Ms. Falk, do you have a copy of the complaint?

15 MS. FALK: I do, your Honor.

16 THE COURT: All right. And Mr. Brugnara, have you
17 seen a copy of the complaint?

18 THE DEFENDANT: I saw it briefly in my house this
19 morning.

20 THE COURT: Okay. In this proceeding this
21 morning, we're going to advise you of the charge against you
22 and your constitutional rights. We'll set further hearings
23 in the case and discuss your release status.

24 To begin with, could you please tell me your name and
25 age for the record.

THE DEFENDANT: Luke Brugnara, 50.

1 THE COURT: And Mr. Brugnara, the first right I
2 remind you of is your right to remain silent. You do not
3 have to make any statements about the charge in this case or
4 anything, for that matter. If you've made a statement in
5 the past, you don't have to make any further statement.

6 If you start to make a statement, you may stop at any
7 time. And you have the right to have your attorney with you
8 during any questioning. But if you do make a statement, the
9 Government may use it against you to obtain a conviction.

10 You are also entitled to an attorney in this case. You
11 have the -- from the beginning to the end. You have the
12 right to hire your own attorney. But if you can't afford to
13 do so, the Court will appoint one for you. And I know you
14 haven't had a chance to speak to counsel this morning, and
15 you were just arrested this morning, so we can -- for the
16 purposes of this proceeding this morning, Ms. Falk is
17 representing you. And then we'll figure out your counsel
18 situation at a later date.

19 As I said, you have been charged in a complaint. Would
20 the Government please summarize the charge and maximum
21 penalties.

22 MR. SPRAGUE: Yes, your Honor. The Defendant has
23 been charged with one count of mail fraud, in violation of
24 Title 18, United States Code Section 1341. The maximum
25 penalties for that offense are 20 years in prison, a term of

1 supervised release of three years, a \$250,000 fine.

2 Restitution, which in this case would, according to the
3 Government, approximate \$11 million and a mandatory special
4 assessment of \$100.

5 THE COURT: Now, you've been charged by a
6 complaint which is essentially charges that are supported by
7 an affidavit, a sworn affidavit of an agent. If the grand
8 jury doesn't return an indictment -- that's -- the grand
9 jury is of 16 people. They hear the evidence, the
10 Government's evidence, and if they find there's probable
11 cause to believe you've committed the crime charged, they
12 issue an indictment.

13 If the grand jury doesn't return an indictment within
14 14 days if you're in custody or 21 days if you're out of
15 custody, you have a right to what we call a probable cause
16 hearing. That would be a hearing before a magistrate judge,
17 at which the Government would have the burden of
18 demonstrating that there's probable cause to believe you've
19 committed the crime charged. But you also have the right to
20 waive that right to a hearing.

21 THE DEFENDANT: Yes, your Honor. I'd like to make
22 a statement that's very important for the Court to hear.
23 There is a judge in the Superior Court of California Pro
24 Tem, also a Professor at Hastings, Robert Kane, who has
25 actually been involved in this specific matter for two

1 months now. It's a civil matter that a judge in the State
2 of California has been mitigating and addressing with their
3 counsel.

4 Moreover, the Federal Public Defender's Office, namely
5 Brandon LeBlanc, who is my attorney, has been fully apprised
6 of this specific circumstance not only from myself, but from
7 Judge Pro Tem Robert Kane, who is also very well respected
8 in the community, head of the Jewish Federation, et cetera,
9 and Professor at Hastings.

10 The bottom line that I'm trying to convey is that it's
11 very important to understand there is not an indictment
12 here. And if there was proper investigation done by the
13 field office of the FBI, they certainly would have spoke to
14 Mr. LeBlanc and certainly Judge Robert Kane, and they would
15 have learned that, in fact, it's a civil matter that Robert
16 Kane had daily involvement in for two months.

17 I've committed no crime. Moreover, I haven't even
18 communicated with these people. I turned it over to Bob
19 Kane day one and told Brandon LeBlanc about it day one, and
20 him and Bob Kane have been interfacing on this matter
21 several times.

22 So it's a complete shock. I'm a family man, married
23 with 25 years with four minor children, a well respected
24 businessman in the community. And quite frankly, I just
25 simply want to get bail today and let the matter go through

1 due process.

2 I'm sure once Bob Kane is interviewed and Brandon
3 LeBlanc is interviewed, I would suspect this matter would be
4 dropped. But in the meantime, I have children that need me
5 daily. I have a moral and a legal duty to my four minor
6 children. And also, I have to support them. And I'm
7 innocent.

8 So I'm no threat or danger to the community. I've
9 actually had a forensic psychologist say that and has
10 interviewed me for the last few months because I was coming
11 off -- a tax matter, and she said I'm no threat or danger to
12 the community at all. She's already conveyed that to this
13 attorney's office. I'm certainly no flight risk. That's
14 already been determined by Judge Spero.

15 And I have four minor children, and I'm innocent. So I
16 mean, there's really no reason not to be granted bail, I
17 mean, based upon my understanding of the law. But that's
18 where I stand today.

19 THE COURT: All right. Thank you.

20 And what is the Government's position?

21 MR. SPRAGUE: Your Honor, the Government moves for
22 detention. And the grounds for that are both flight, but
23 primarily danger.

24 Briefly as to flight, but then I'd like to focus my
25 comments on danger. Mr. Brugnara was arrested this morning

1 at 224 Seacliff, which public records state is a 5500-
2 square-foot residence. The assessed value is approximately
3 \$8 million. The property taxes the last three years have
4 averaged \$96,000 per year.

5 In August of 2012, he applied for a \$9 million loan.
6 In that loan application, he represented that he had
7 \$300,000 in cash, \$150 million in real estate, \$100,000
8 worth of automobiles, \$2 million in casino equipment and a
9 \$500 million art collection. He claimed his net worth was
10 \$650 million in researching this \$9 million -- seeking this
11 \$9 million loan.

12 In contrast to that, after his two Federal Court cases
13 concluded, he was ordered to pay \$1.9 million in
14 restitution. And he has paid in the neighborhood of a
15 couple hundred dollars to that -- toward that restitution.
16 He has filled out financial affidavits with the court
17 process, just pretty much putting a circle with a line
18 through it for zero for all assets, except for a few hundred
19 dollars here and there, and has claimed that he's living on
20 borrowed funds, while he's living in this house that's worth
21 somewhere in the neighborhood of 6 to \$10 million.

22 He's also prepaid rent for his wife and kids up in
23 Corte Madera that is in the neighborhood of 5500 to \$6,000 a
24 month. And that's been prepaid through the next couple of
25 months. So there's real financial questions here.

1 There's also -- turning to the facts of this case
2 briefly, Mr. Brugnara received five crates of art. The
3 total value of the crates of art were approximately \$11
4 million. This morning when he was arrested and the
5 residence was searched, four of those crates, but not five,
6 were recovered. Mr. Brugnara I know has claimed that he
7 only received four, but the people who shipped it to him and
8 the lay bills and the shipping know that it's five.

9 Now, turning to some of the information about Mr.
10 Brugnara's danger. When the two cases were set to begin, he
11 eventually ended up pleading guilty to three counts of
12 filing false tax returns, two false statement accounts under
13 18 USC Section 1001 and four violations of the Endangered
14 Species Act. He pled guilty back in January of 2010.

15 The week before the trial was set to begin, he was
16 arrested for threatening to kill two witnesses in the trial.
17 He was then remanded. He then decided to plead guilty. And
18 he also threatened to kill his wife.

19 THE DEFENDANT: That's absolutely false, your
20 Honor. In fact, she testified in front of Judge --

21 MR. SPRAGUE: Judge Chesney or Judge Alsup.

22 THE DEFENDANT: I'm sorry. She actually testified
23 in open court in front of Judge Chesney that there was no
24 threat against her life ever. Moreover, your Honor, that
25 charge came three days before the commencement of the trial,

1 after I had been on OR for two years in a tax case where I
2 was indicted for \$45 million, and the forensic accounting
3 came back \$300,000.

4 So, okay --

5 THE COURT: No, no, no. But I'm going to let the
6 Government finish, and then you'll have a full opportunity
7 to respond.

8 THE DEFENDANT: Thank you.

9 THE COURT: All right. Mr. Sprague.

10 MR. SPRAGUE: Your Honor, the allegations which
11 were supported by declaration in that case were that Mr.
12 Brugnara said to his wife in front of his then 14-year-old
13 child that these two witnesses, Joe McAvoy (phonetic) and
14 David Chandler, I know bad people, I have a lot of money,
15 and I'm going to have them killed. I'm going to put a
16 bullet through their head.

17 His wife then said, I may get called at this
18 evidentiary hearing which is coming up in connection with
19 this trial that was about to start, and if they put me on
20 the stand, I'm going to have to tell the truth and I'm going
21 to have to say that. And then he said, well, if that
22 happens, I'll have to put a bullet through your eyes.

23 THE DEFENDANT: This is --

24 THE COURT: You'll have an opportunity to respond.

25 THE DEFENDANT: -- to the testimony in court, your

1 Honor.

2 THE COURT: Okay.

3 MS. FALK: That's not how it works.

4 MR. SPRAGUE: His wife then relayed that to
5 someone who relayed it to the witnesses in law enforcement,
6 and he was remanded at the time. He then pled guilty.

7 He was then released on strict conditions after that.
8 And part of the strict conditions were he was to be in the
9 third-party custody of his mother at her home 24/7 and on
10 electronic monitoring. He could only leave with
11 preauthorization for limited purposes.

12 The first day he got approval to leave on
13 preauthorization to go visit a couple of attorneys, he went
14 somewhere else. He went back to 224 Seacliff. There are
15 pictures of him taken there. And a few weeks later, he was
16 remanded for violating the terms of his pretrial release.

17 He eventually -- when he pled guilty, he moved to
18 withdraw his pleas. The case went through the court system
19 for a while. He eventually pled guilty. He then appealed.
20 He filed a motion for bail pending appeal before Judge
21 Alsup.

22 Judge Alsup found -- denying that motion for bail
23 pending appeal, Judge Alsup found that Defendant, quote,
24 "has a history of doling out threats of violence, and
25 several individuals have obtained restraining orders against

1 him," end quote. That was March 30th, 2011.

2 Some of those threats that were documented in the two
3 prior Federal Court cases include in the 1999, 2000 time
4 frame, he threatened a Deputy City Attorney in charge of
5 regulatory cases against the Defendant where the Defendant
6 had been charged with violating various building
7 regulations.

8 Defendant said he was, quote, "going to get," end
9 quote, the attorney. He also allegedly grabbed and
10 threatened the City's main witness, who was a San Francisco
11 fire inspector, telling him, quote, "I'll take you on any
12 time," end quote, and, quote, "I will get you," end quote.
13 He said he was worth \$200 million, and he would get both of
14 them.

15 He was eventually served with a contempt motion. He
16 made a throat-slitting gesture to the Deputy City Attorney
17 and told him, quote, "you're dead," end quote.

18 THE COURT: What are you reading from?

19 MR. SPRAGUE: I'm reading from notes I've taken
20 from several inches of pleadings in his prior federal cases
21 which attach declarations alleging what I'm --

22 THE DEFENDANT: Declarations.

23 MR. SPRAGUE: He then importantly -- granted, the
24 Defendant denied these things. However, the City obtained a
25 restraining order against him ordering him not to assault,

1 batter, stalk or follow that particular Deputy City Attorney
2 and not to come within 100 yards of his work or residence.

3 In the same time period, he allegedly threatened a
4 Court-appointed receiver who was charged with collecting
5 rents from Defendant's properties to pay debts. And this
6 purported receiver also put in a declaration in this matter.

7 The Defendant then even wrote and signed a memo to all
8 of his tenants, instructing them not to pay the Court-
9 appointed receiver, despite orders of the San Francisco
10 judge, calling the Court-appointed receiver a trespasser and
11 stating that the court documents were not valid.

12 He also allegedly threatened his mistress, who was
13 pregnant with his child.

14 THE DEFENDANT: Not true. And I'm offended by
15 that comment, your Honor. The pregnancy problem has already
16 been adjudicated in Family Court by Judge Gilibock
17 (phonetic), and it was (indiscernible), your Honor.

18 MR. SPRAGUE: And he also threatened his
19 mistress's former husband. The mistress reported threats to
20 the police. She obtained a restraining order against him.
21 And then there were -- the Defendant had his brother -- and
22 that's correct, this is in the 2000, 2001, 2002 time frame.

23 The Defendant had his brother try to work out a
24 settlement with the mistress, and the brother ended up
25 befriending the mistress. Defendant ordered his own brother

1 not to have any contact with the mistress. He refused. And
2 then the Defendant threatened his own brother, and his own
3 brother had to get a restraining order against Mr. Brugnara,
4 which the Defendant violated and was arrested by SFPD for
5 that.

6 THE DEFENDANT: That's not accurate.

7 MR. SPRAGUE: In 2008, after having been warned
8 for similar conduct, Mr. Brugnara -- the pastor at his
9 children's school, St. Vincent de Paul Parish in San
10 Francisco, directed Defendant not to come to the parish
11 anymore and to move his children to another school.

12 After the Defendant threatened the parish, the parish
13 had to file for a restraining order against the Defendant.
14 And the Defendant's response, when told, you can't come to
15 the school and your kids need to leave the school was, I own
16 a billion-dollar company and answer to no one, which his
17 actions prove, your Honor, is that he seems to answer --
18 think he doesn't have to answer to anyone.

19 He got out of -- when he got out of prison in August of
20 2012, approximately in August of 2012 for his federal cases,
21 previous federal cases, within six months, there was
22 probable cause to search his house. They did a search
23 warrant, and among other items, they found a firearm and
24 ammunition in his home, which was clearly illegal. He also
25 had a carry-and-conceal firearm conviction back from many

1 years ago, 1989. And then as a result of the federal cases,
2 he obviously wasn't allowed to have these things.

3 The probation officers who are supervising him on
4 supervised release had filed Forms 12 alleging him of lying
5 to probation officer about not possessing art, lying to
6 probation officer about bank account access and information,
7 lying by omission, failing to pay restitution, not
8 submitting monthly reports.

9 And his answer to that was he insisted that the
10 probation officer had lost them. Lying about loans he had
11 received as recently as July 2013 through which he prepaid
12 some of the -- on the Seacliff residence as well as the rent
13 on the Corte Madera residence where his wife and kids live
14 and received substantial cash and did not tell Probation
15 about it.

16 THE COURT: So he's currently on supervised
17 release?

18 MR. SPRAGUE: He's currently on supervised
19 release, your Honor, which brings me to 3142(d), which my
20 reading is that if he is on supervised release or execution
21 of sentence or probation and parole and then he may flee or
22 pose a danger to the community, the judicial officer shall
23 order the detention of such person for a period of not more
24 than 10 days, excluding Saturday, Sundays and holidays, so
25 two weeks.

1 So the Government can, in essence, inform Probation
2 about this, which we've tried to do already. I understand
3 Probation is at training today. Many of them are, and I
4 couldn't get the agent. I think it's Jennifer James,
5 although he's been through several. I suspect they will
6 file a Form 12, and then we're back before the judge. I'll
7 be arguing that it's then his burden on both prongs, and
8 I'll be arguing he cannot meet them in light of the history
9 that I've outlined, your Honor.

10 THE DEFENDANT: Okay. Your Honor, I want to
11 address this from memory because I didn't have the benefit
12 of writing this. If I miss any of his claims, I'd
13 appreciate it if you'd question me on it so I can address
14 those.

15 I'm absolutely transparent. I have nothing to hide. I
16 haven't done \$2 billion in deals. You as a judge know, as a
17 federal judge, it's impossible to get \$5 million, let alone
18 2 billion, unless you're a person of character, man or
19 woman. Because people that make the loans on Wall Street,
20 they lose their livelihood, their jobs, their children's
21 college tuitions and mortgages if they make a mistake and
22 lend someone like me 5, 10, \$15 million (indiscernible)
23 billion dollars.

24 So I'm going to educate this gentleman here on the
25 facts now. For starters, let's start chronologically.

1 Let's go back 15 years. Fifteen years to 1999. I was
2 shaken down by a young woman after I -- had been in
3 magazines. She claimed I fathered a child when, in fact, I
4 fathered no child. Paul Cave (phonetic), the gentleman who
5 is my civil attorney, brought a civil case in the court
6 of -- the State of California court. It was adjudicated in
7 my favor in Judge Gilibock's court.

8 She the refused to take a blood test that Judge
9 Gilibock ordered. So I mean, that tells it all right there.
10 She had absolutely no credibility. That comes to I
11 threatened him.

12 Let's talk about more serious issues. The tax cases,
13 which is recent history in the last -- we can talk about
14 this priest in 2008. Yeah, I went up to Father Green
15 (phonetic). He was stealing \$350,000 from St. Vincent de
16 Paul, like most of these priests that are dirt bags. And
17 I've been in that church. And I went up to him, I said,
18 hey, listen, I have Matthew Hewey (phonetic), who is the
19 contractor in all of our office buildings and on the San
20 Francisco Airport, and Genie (phonetic). He's a major
21 contractor, an Asian gentleman who is very well respected in
22 the public community.

23 And I said, he can paint the church for \$38,000 and
24 will guarantee it at 40,000. Father Green, of course, was
25 going out to the parishioners saying he needed \$420,000. So

1 I confronted the man and told him what I thought of him.
2 And he knew there would be backlash, so that he kicked my
3 four children -- four children from kindergarten through
4 sixth grade out of school because the guy is just a piece of
5 garbage like most of these priests are.

6 THE COURT: So I'm going to stop you.

7 THE DEFENDANT: (Indiscernible).

8 THE COURT: I want to -- I actually want to focus
9 on just post-August 2012. So you can -- I'll accept that
10 you --

11 THE DEFENDANT: Yes.

12 THE COURT: -- deny everything that the
13 Government --

14 THE DEFENDANT: I deny --

15 THE COURT: -- preAugust 2012. So what I want
16 to -- and one reason I'm doing this is, Ms. Falk did advise
17 you not to speak. And I don't -- so I don't want you to say
18 things that aren't going to make any difference --

19 THE DEFENDANT: I understand.

20 THE COURT: -- that may then come down the line
21 and hurt you, because there's no point to that. So that's
22 why I'm stopping you.

23 So I'll tell you what the thing is, is that you do have
24 two prior convictions recent in this court. And following
25 those, your release, you have violated the terms of your

1 supervised release or had Form 12s filed. So there's a
2 history there, and then there's the allegations of this
3 complaint, which I'm familiar with because I signed the
4 complaint and I've read the affidavit.

5 So all of that, I believe -- at least the Government
6 has met their burden to at least hold you to have a hearing.
7 You're entitled to a hearing, but to remand you in the
8 meantime. So I'm just telling you that so that you can then
9 focus on really since your supervised release.

10 THE DEFENDANT: Yes. I'll address that now, your
11 Honor. And it's important to understand that -- let's start
12 with from the federal case. Judge Spero, in fact, released
13 me.

14 THE COURT: But I'm just going to stop you for a
15 second. What I'm saying is, they have enough to hold you,
16 and you're entitled to a hearing.

17 THE DEFENDANT: I understand. What I'm trying to
18 plead for, your Honor --

19 THE COURT: Well, Ms. Falk wants to say something.

20 MS. FALK: I don't actually think the Government
21 is correct about this 10-day rule. I do think they're
22 correct that he has the burden to establish that he's on
23 supervised release in a pending --

24 THE COURT: I'm not saying the 10 days.

25 MS. FALK: Okay.

1 THE COURT: I'm just saying today, you come in --
2 it's not a presumption case, right? I'm just saying they
3 come in, the Government has made a proffer that satisfies
4 the Court. Not that he's a risk of nonappearance, that he's
5 a danger. That has been satisfied. Although there is also
6 a risk of nonappearance because of all the inconsistencies
7 with respect to the financial resources.

8 THE DEFENDANT: I need to respond to that.

9 THE COURT: Okay. Just a minute. Let me --

10 THE DEFENDANT: Can I respond after you finish?

11 THE COURT: You can. I just want to let --
12 because you do have an attorney here. You have -- you have
13 the right to speak, but I want to let the attorney first
14 respond and give you advice, and then you can.

15 MS. FALK: She's made up her mind.

16 THE DEFENDANT: I understand. But not until I
17 explain --

18 THE COURT: All right. So Ms. Falk, I just want
19 to make sure I'm applying the law correctly.

20 MS. FALK: Okay.

21 THE COURT: So my -- I'm not saying that they're
22 entitled to hold him for 10 days at all based on that.

23 MS. FALK: That's fine. That's --

24 THE COURT: What I'm just saying is, you're a
25 normal, everyday, common felony charge, nonviolent.

1 MS. FALK: Nonsupervised released.

2 THE COURT: Nonsupervised release. They've made a
3 proffer which I think is sufficient to detain him pending --
4 entitled to a hearing.

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: So now go ahead.

7 THE DEFENDANT: And I would like to oppose that
8 because he's proffering to the Court false information. And
9 this is critical because the first thing is -- let's talk
10 about the serious issues of this threat on life, which is
11 absurd on the face of it from four years ago.

12 Your Honor, that went in front of a grand jury. And I
13 spoke to my attorney, Brandon LeBlanc and my civil attorney,
14 Robert Kane, the Judge. He goes, I've never heard of
15 anybody losing a grand jury indictment. The grand jury
16 rejected that, your Honor, because it was false. It was a
17 false thing.

18 I won. They continued and proceeded with that charge
19 at the grand jury, and they lost at the grand jury. And the
20 reason why they did it, your Honor, is very simple. Because
21 there's a reason and motive for everything. These gentlemen
22 are civil servants. They have no ax to grind with Luke
23 Brugnara one way or another. They do. Because what they
24 did in the beginning is they indicted me for \$45 million.

25 And what happened, your Honor, was it was accounted

1 down to \$300,000 of \$103 million, which ended up being one-
2 third of 1-percent. So if you made \$100,000 in a year --
3 and they did a forensic accounting for 2010, so it went all
4 the way back to 2001. They filed the action at the end of
5 the seven-year statute of limitations literally with one
6 week to go.

7 So what happened was, they needed to really cover their
8 A-S-S because they probably would have lost their jobs.
9 They spend millions of dollars believing I owed tens of
10 millions of dollars, and it was only \$300,000.

11 So they padded it with the Fish case, which was
12 completely nonsense. Still going to trial. So they threw
13 up the hail Mary pass. It's just like in a football game.
14 Last second hail Mary passes. Grab the guy, throw him in a
15 dangerous prison cell and hope that he pleads -- asks for an
16 evidentiary hearing, put it out three weeks.

17 This all happened the night before the trial, your
18 Honor. So -- in front of Judge Chesney. So the fact of the
19 matter, that's the way they operate. Okay. Because they
20 knew they were going to lose the case.

21 Also, I won the civil tax case, which was 48 hours
22 before the indictment. The same U.S. Attorney, Thomas
23 Newland (phonetic), was a civil tax attorney out of
24 Washington when they sued me for \$11 million in front of
25 Judge Haynes (phonetic) in U.S. civil Tax Court. They lost

1 that case.

2 During that case, Newland was appointed to the U.S.
3 Attorney's Office to their tax division, so he had an ax to
4 grind with me. People got in a lot of trouble. A lot of
5 people got fired in the IRS over in the San Rafael office
6 from that case because they spent so much money chasing
7 their tail on me.

8 So there's a lot of bad blood between myself and the
9 U.S. Attorney's Office. They tried to set me up, your
10 Honor, while I was on probation, spent tens of thousands of
11 dollars, if not \$100,000 perpetuating a sting where they had
12 a guy that I knew who owned a pizza parlor try to solicit me
13 to sell artwork. And that had blown up in their faces. In
14 fact, the art was just copies. It was represented as such.
15 It went absolutely nowhere.

16 So they continue -- I'm on probation. I'm supposed to
17 be on probation two weeks ago, but I'm going to be off in a
18 few months. And they're trying to prolong my agony because
19 they're owed the restitution.

20 Now, this has been in front of Judge Alsup for about a
21 year. The fact of the matter is, all of the properties were
22 owned by limited liability companies that were formed by
23 Orrick, Herrington 12, 15 years ago. This wasn't in any way
24 to try to deceive the Government or hide assets or anything
25 like that. These entities were formed 15 years ago. And

1 they were structured by the biggest law firm in the country.

2 So there is no hidden agenda. Judge Alsup, who is one
3 of the partners at LOFO (phonetic) was trying to explain to
4 the U.S. Probation at the last hearing, because they're
5 saying, well, we don't understand this. How can he
6 negotiate his debt down, what was a forbearance and a
7 complicated restructuring of debt. I mean, they have
8 divisions in major law firms that are just focusing on that
9 where the litigators and transactional attorneys don't even
10 get involved in that because it's so sophisticated.

11 So what's going on here is you have a situation where
12 there's a disconnect of the U.S. Attorneys and -- especially
13 the U.S. Probation Office, an understanding and concept of
14 what's going on. So in their mind, they say, oh, my God,
15 this guy is doing something illegal. This can't be right.
16 How can he live in this house, and how can this happen and
17 how can that happen. He must be a criminal.

18 In reality, I'm not. My attorney for 21 years has been
19 Bob Kane and Brandon and everyone stands behind me. We were
20 in front of Judge Cousins, who has already ruled on my
21 financial condition. To the point, Brandon LeBlanc.

22 So this -- he's just, you know, putting in front of you
23 conjecture and just false information, capricious and
24 arbitrary statements based upon supposed witnesses that
25 signed affidavits that are then impeached by grand juries

1 and in open court by testimony, for instance, of my wife.
2 She testified in front of Judge Chesney I never threatened
3 her.

4 And moreover, she was a witness in the grand jury
5 testimony where I never threatened anyone else. Because the
6 threat supposedly on her brother, whatever, on this Fish
7 case went through her. She said it never, in fact,
8 happened, and she had a witness that said also that that
9 never happened.

10 So again, this is conjecture. This is arbitrary,
11 capricious statements from parties that basically are trying
12 to cover their behinds.

13 Now, I'm not a threat or danger to the community. I
14 even went, at the advice of Brandon LeBlanc, to talk to a
15 top forensic psychiatrist who is a forensic psychiatrist for
16 this court, Cathy Barrett. And that was put forth by the
17 U.S. Attorneys and U.S. Probation, Jennifer James. And I
18 voluntarily went and spoke to her for a few months.

19 And she already told Brandon and everyone, there's no
20 threat or danger to anyone. She even recommended that
21 Probation terminate early. And this is who the Court
22 depends on for professional advice.

23 So he can play psychologist over there all he wants
24 based upon hearsay and half-cooked arguments, but the
25 reality is, the Court has to rely upon (indiscernible) who

1 is a professional that studies and gets her Master's degree
2 and is a professional on that side.

3 So from a threat or danger standpoint, as of last
4 Wednesday, I'm no threat or danger to anybody. And from a
5 practical standpoint, I'm not. I've been married 25 years.
6 I have four children. I have no record of ever laying a
7 hand on anybody. There's no proof that anybody has been
8 threatened because I haven't threatened anybody.

9 So again, it's just arbitrary statements that he's
10 trying to proffer as proof when, in fact, they've already
11 been caught lying to Judge Beeler, your Honor, just to let
12 you know, on that setup with the artwork with the Warhol.
13 And one of the U.S. Attorneys got pulled off the case and
14 was reprimanded by Judge Beeler for lying to her on a false
15 proffer. Charles -- what's his last name? Charles --

16 MS. FALK: I don't --

17 THE DEFENDANT: It was -- but Judge Beeler has
18 already reprimanded --

19 THE COURT: All right. So --

20 THE DEFENDANT: Okay. So I'm -- this is the
21 thing. I can't be remanded because the complexity of my
22 business -- if you were remanded -- I mean, every day is
23 critical for my ability to support and provide for my family
24 and to be productive. Because if you pull one of the cogs
25 out of this wheel, it's going to collapse because that's my

1 business, finance. It's not like I'm a carpenter. Okay.
2 Well, let you go here for -- it'll just collapse everything.

3 So the consequences of even being remanded for one day
4 would be -- I could recover from, and then it would be a
5 travesty on my rights to due process because they haven't
6 even fulfilled their burden of proof regarding the danger
7 because it's contradicted by the psychiatrist.

8 And also, the fact of the matter is that the judge has
9 already -- as of just last Wednesday, Judge Alsup has
10 already ruled that I'm free in the community.

11 I think the most troubling point that I have with this
12 entire agenda here is that the federal office of --
13 Defender's Office has been well aware of these five boxes.
14 Okay. And these five boxes, if you check the woman who sent
15 them, she's all over the internet for art fraud, this Rose
16 Long.

17 So you just plug in her name, Rose Long, art fraud,
18 there's 10 articles that pop up saying that she tries to --
19 and she's been accused of selling to young married couples
20 Picassos and different art pieces and then telling them
21 basically whatever.

22 So this is someone that's got very unclean hands. I
23 immediately contacted --

24 MS. FALK: You need to be careful what you -- this
25 is --

1 THE DEFENDANT: It's a fact --

2 THE COURT: I'm going to -- I'm going to stop you
3 as well.

4 THE DEFENDANT: I appreciate that.

5 MS. FALK: Now you're really --

6 THE COURT: I'm going to stop you for a second. I
7 hear what you're saying about all that, but the Government
8 has made a proffer, and this is the way it works. That it's
9 sufficient for me to order you remanded. You're entitled to
10 a hearing on the detention in which you can bring the report
11 that you have from the psychiatrist and all those kinds of
12 things.

13 But I'm ordering you remanded now. I think the
14 Government has made --

15 THE DEFENDANT: (Indiscernible) you reconsider.

16 THE COURT: I understand, but I've made my order,
17 and that's going to stand.

18 THE DEFENDANT: What is it based on, your Honor?

19 THE COURT: It's based on the -- it's based in
20 large part on the fact that you are -- you are currently on
21 supervised release, that while on supervised release, there
22 have been several Form 12s already filed that you haven't
23 even complied with that.

24 So I find that you are not -- that you are not amenable
25 to supervision of being released. You are well known to

1 this court.

2 THE DEFENDANT: I know. Just --

3 THE COURT: And I also --

4 THE DEFENDANT: Judge Alsup -- last Wednesday
5 Judge Alsup ruled, in fact, told the U.S. Attorneys -- when
6 they came forth with these arbitrary comments, he said to
7 them, he said, if you have a Form 12 violation, bring it in
8 front of me.

9 The only Form 12 violation that they brought was last
10 October -- got heard last October 9th. And the fact of the
11 matter is, everything was resolved with Probation and the
12 U.S. Attorneys on that, and Alsup said, okay, I'm going to
13 let you off probation on April 21st. And the hearing got
14 heard last week where I said, there's nothing fresh. I'll
15 let you off probation.

16 Well, they came and said, well, we still haven't
17 figured out this refinance from last January. Brandon
18 LeBlanc said, hey, listen, this is untimely. Moreover,
19 Brandon met with Jennifer James and Probation for five hours
20 with me, and Marlana Peters, and they signed off on it
21 before Jennifer went down to San Jose.

22 And it's just the new probation officers didn't
23 understand the complexity of the financial transaction. But
24 it had nothing to do with me. It was a limited liability
25 company set up 15 years ago. And Judge Alsup understood

1 that because he understands complex business transactions.
2 He said, listen, I'm not going to let him off supervised
3 release, but if you have an issue with Mr. Brugnara, file a
4 proper Form 12 and do it not willy-nilly, were his exact
5 words. And I want to see what your claim is, not, oh, he's
6 living in a house at Seacliff or he's eating, you know, two
7 double cheeseburgers instead of macaroni. He basically
8 said, enough of this already.

9 So I can't afford to have my liberty seized from me
10 based upon this continued harassment, basically. Because
11 there is nothing -- I mean, just like coming today. Well,
12 we don't have an indictment and we don't have anything
13 substantive. But hey, by the way, throw him in jail.
14 That's not fair. I mean, you've got to treat me the same
15 way you would want to be treated. It's not fair.

16 THE COURT: I hear what you're saying. I am
17 treating you the same as we treat everyone. I understand
18 you disagree. I'm ordering you remanded.

19 When would you like to return, Ms. Falk?

20 THE DEFENDANT: Immediately.

21 MS. FALK: If I can get -- I'll have to pull his
22 file.

23 (Defendant confers with counsel.)

24 MS. FALK: I can set it for tomorrow.

25 THE COURT: I don't know that you're going to have

1 anything more to offer.

2 MS. FALK: I understand.

3 Is it in Brandon's file?

4 MR. SPRAGUE: Your Honor, I'd ask for at least
5 three days. We need to notify -- the Government needs to
6 notify Probation. Probation, I suspect, but I'm not sure,
7 would file a Form 12. And that's going to have an immediate
8 bearing on the burden in the matter on the detention issue.
9 So I'd ask for at least until Friday, if not the full three
10 days, which would be Monday, your Honor.

11 MS. FALK: One thing I could do by tomorrow is get
12 some sureties. And I could come up with a set of proposed
13 conditions that may not be perfect to either side, but at
14 least I'd have some -- and somebody would be on the hook
15 tomorrow if he were to go ahead and violate whatever the
16 Court were to set. I probably could get my hands on the
17 forensic report.

18 In fact, did you give it to --

19 THE DEFENDANT: You can phone Cathy Barrett.
20 She's in the Forensic Institute. And she said she'd be
21 willing to update that at any time. I know she did it for
22 Brandon last Wednesday.

23 The thing is, your Honor, I can have either my mother
24 or my wife sign a surety bond. I'm no threat or danger.
25 They're willing to sign and have in the past. Judge Spero

1 deemed -- excuse me. I self-surrendered when we came to the
2 conclusion in the last case to the location, the facility.
3 Spero allowed me to drive across the country, Texas. And
4 Judge Spero, your Honor -- to drive across the country. I'm
5 no flight risk. I'm no danger.

6 I just can't -- I can't be tied up this way. There's
7 no reason not just to let me appear back on my own
8 recognizance. And I can assure this Court I'll bring a
9 surety, a guarantor, my wife and my mother.

10 THE COURT: Okay. I'm not releasing you today.
11 I'm remanding you to the custody of the U.S. Marshals.
12 We'll return on Friday. We'll return on Friday. That gives
13 them the opportunity to have Probation. I want to see all
14 the -- you know, the Form 12s and review that.

15 MS. FALK: I can do that.

16 MR. SPRAGUE: Thank you, your Honor.

17 MS. FALK: I absolutely can do that.

18 MR. SPRAGUE: Oh, and your Honor, the Government
19 moves to unseal the criminal complaint and arrest warrant.

20 THE COURT: Yeah, everything is unsealed. All
21 right. So --

22 MR. SPRAGUE: Also, the search warrant. Did I
23 miss anything? The application for -- anything that's been
24 filed to date. The file to date.

25 (Defendant confers with counsel.)

1 THE DEFENDANT: This is a civil matter, your
2 Honor.

3 THE COURT: I understand that argument. I
4 understand that argument. All right.

5 MS. FALK: So this will give me some -- this will
6 allow me to do a full presentation. I can check off a lot
7 more boxes.

8 (Defendant confers with counsel.)

9 THE COURT: Ms. Falk, maybe you can go upstairs
10 and visit.

11 MS. FALK: Yeah.

12 THE COURT: She'll come up and see you after
13 court.

14 MS. FALK: They took him so fast -- sometimes they
15 take them --

16 THE COURT: Well, they're going to be here for a
17 little while. I'd like Ms. Falk to be able to see him.
18 Okay.

19 So Ms. Falk will come see you after court.

20 MS. FALK: I'll come up and see you because it's a
21 lot better. Okay.

22 THE COURT: All right. Thank you.

23 MR. SPRAGUE: Thank you, your Honor.

24 THE CLERK: So we're coming back tomorrow?

25 THE COURT: No. Friday.

1 THE CLERK: Friday?
2 (Proceedings concluded at 10:26 a.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber

Thursday, June 5, 2014